



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-179101

December 28, 1973

Bellers, Conner & Canoe  
1625 K Street, NW.  
Washington, D.C. 20006

Attention: C. Stanley Dees, Esquire

Gentlemen:

This is in reply to your letter of October 3, 1973, and prior correspondence, concerning the protest of AEC Management Services, Incorporated (AEC), against rejection of its proposal and award of a contract to another company under request for proposals (RFP) H00123-73-R-1613, issued by the Naval Regional Procurement Office, Los Angeles, California.

The RFP was for mess attendant services for the Naval Construction Battalion Center, Fort Huachuca, California. Thirteen offers were received in response to the solicitation, and after a technical evaluation was performed eight offers, including ABC's, were found to be not within the competitive range. Best and final offers were subsequently requested from the five offerors in the competitive range, and award was made on June 29, 1973, to Tidewater Management Services, Incorporated (Tidewater).

The RFP required all offerors to submit manning charts. Section D of the RFP set forth the Government estimates of the total manning hours required for satisfactory performance and provided that:

"Submission of manning charts whose total hours fall more than 5% below these estimates may result in rejection of the offer without further negotiations unless the offeror clearly substantiates the manning difference with specific documentation demonstrating that the offeror can perform the required services satisfactorily with fewer hours."

After initial proposals had been received, the Navy revised downward its estimate of required man-hours and requested revised

[Proposal Rejection Protest]

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proposals based on the new estimates. The revised manning charts submitted by ABC on June 1, 1973, reflected 86,702.5 man-hours per year, which was a deviation of more than 6 percent from the Government estimate of 92,291 man-hours. ABC's offer was rejected because it did not contain any justification for exceeding the 5 percent variance from the Government estimate, even though the technical evaluators otherwise found the proposal to be "satisfactory." You argue that the contracting officer failed to exercise appropriate discretion by treating the not more than 5 percent variance requirement as an "absolute prerequisite for contract award," and you state that this action was inconsistent with the actions taken by other contracting officers in similar procurements.

The rejection of ABC's proposal is explained in the Documentation for the Review Board, dated June 11, 1973, which was included with the Navy's report on this protest. The document states:

"\* \* \* ABC's offer was deficient by 976 manhours or over 6% less. ABC was not the incumbent contractor and did not offer any substantiating evidence as to the reason for the manning differences. As per Section D(a) of the RFP, and in view of the fact that adequate competition was available, ABC's offer was rejected and ABC was eliminated from \* \* \* the proposed competitive range."

We do not believe that rejection of ABC's proposal was proper under the reported circumstances of this case. We have previously noted that 10 U.S.C. 2304(g) contemplates that procurement officials are to determine a competitive range so that meaningful discussions can be held with all firms submitting proposals within that range, 50 Comp. Gen. 679, 684 (1971). Here ABC's proposal was found to be technically satisfactory, but was rejected without discussion solely because that firm did not specifically justify a deviation of more than 6 percent from the Government estimate of required manning levels, even though the determination of "satisfactory" was based on the manning charts containing the deviation. Clearly, the permissive terms of the RFP did not require rejection of the ABC proposal. Furthermore, we think the rejection was inconsistent with ASPR 3-805.2 (DPC #110, May 30, 1973), which provides that the competitive range "shall include all proposals which have a reasonable chance of being selected for award" as well as those as to which "there is doubt" as to whether it is in the competitive range. It appears that what

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the contracting officer did here is analogous to determining the competitive range by use of a predetermined score, a practice which we have criticized as contrary to sound procurement policy, 50 Comp. Gen. 59 (1970).

With respect to the award to Tidewater, the record indicates that the man-hours proposed in that firm's best and final offer, as well as in the offer submitted in response to the Government's revised estimate, were within 5 percent of the Government's estimate, and that the award was otherwise in accordance with the RFP criteria.

Notwithstanding our conclusion that ABC's offer should not have been regarded as outside the competitive range without an opportunity to submit documentation substantiating the manning differences, we do not believe the circumstances warrant interference with the good-faith award to Tidewater. However, we are advising the Secretary of the Navy that the renewal option in the contract should not be exercised.

Sincerely yours,

R.F.KELLER

[Deputy Comptroller General  
of the United States